

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CYRIL D. MCCRAY,	§	
	§	No. 705, 2009
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0602003401
Appellee.	§	

Submitted: May 6, 2010  
Decided: May 28, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**ORDER**

This 28<sup>th</sup> day of May 2010, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”), his attorney’s motion to withdraw, and the State’s response, it appears to the Court that:

(1) In March 2006, the appellant, Cyril McCray pled guilty to resisting arrest, criminal impersonation, failure to obey a police officer, possession of marijuana, and violation of probation. In July 2006, after a pre-sentence investigation, the Superior Court sentenced McCray to one year at Level V for possession of marijuana and sixty days at Level V for failure to obey a police officer. For resisting arrest and criminal impersonation, the Superior Court sentenced McCray to a total of two years at Level V

suspended for six months at Level IV and probation. For the violation of probation, the Superior Court sentenced McCray to two years at Level V.

(2) On September 9, 2009, McCray was arrested on new charges. The following day, McCray was charged with violation of probation. At a hearing on November 4, 2009, the Superior Court found McCray guilty of violation of probation and sentenced him to two years at Level V followed by six months at Level II. This appeal followed.

(3) On appeal, McCray's defense counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.<sup>1</sup> Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>2</sup>

(4) Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel

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<sup>1</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

<sup>2</sup> *Id.*

states that he provided McCray with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also advised McCray that he had a right to supplement Counsel's presentation. McCray has not raised any issues for this Court's consideration. The State has responded to the position taken by Counsel and has moved to affirm the Superior Court's judgment.

(5) This Court has reviewed the record carefully and has concluded that McCray's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel has made a conscientious effort to examine the record and the law and has properly determined that McCray could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice